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to make, keep current, or preserve pursuant to any provision of any rule or regulation of the Commission adopted under the Advisers Act, or any part of such books and records which may be specified in any such demand.

(j) Notwithstanding anything in the foregoing, in any case in which the Director of the OCIE believes it appropriate, the Director may submit the matter to the Commission.

[60 FR 39644, Aug. 3, 1995, as amended at 66 FR 35842, July 9, 2001]

Subpart B—Disposition of Commission Business

AUTHORITY: 5 U.S.C. 552b; 15 U.S.C. 78d-1 and 78w.

SOURCE: 42 FR 14692, Mar. 16, 1977, unless otherwise noted.

§ 200.40 Joint disposition of business by Commission meeting.

Any meeting of the Commission that is subject to the provisions of the Government in the Sunshine Act, 5 U.S.C. 552b, shall be held in accordance with subpart I of this part. The Commission's Secretary shall prepare and maintain a Minute Record reflecting the official action taken at such meetings.

[60 FR 17202, Apr. 5, 1995]

§ 200.41 Quorum of the Commission.

A quorum of the Commission shall consist of three members; provided, however, that if the number of Commissioners in office is less than three, a quorum shall consist of the number of members in office; and provided further that on any matter of business as to which the number of members in office, minus the number of members who either have disqualified themselves from consideration of such matter pursuant to § 200.60 or are otherwise disqualified from such consideration, is two, two members shall constitute a quorum for purposes of such matter.

[60 FR 17202, Apr. 5, 1995]

§ 200.42 Disposition of business by *seriatim* Commission consideration.

(a) Whenever the Commission's Chairman, or the Commission member

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designated as duty officer pursuant to § 200.43, is of the opinion that joint deliberation among the members of the Commission upon any matter is unnecessary in light of the nature of the matter, impracticable, or contrary to the requirements of agency business, but is of the view that such matter should be the subject of a vote of the Commission, such matter may be disposed of by circulation of any relevant materials concerning the matter among all Commission members. Each participating Commission member shall report his or her vote to the Secretary, who shall record it in the Minute Record of the Commission. Any matter circulated for disposition pursuant to this subsection shall not be considered final until each Commission member has reported his or her vote to the Secretary or has reported to the Secretary that the Commissioner does not intend to participate in the matter.

(b) Whenever any member of the Commission so requests, any matter circulated for disposition pursuant to § 200.42(a) shall be withdrawn from circulation and scheduled instead for joint Commission deliberation.

[42 FR 14692, Mar. 16, 1977, as amended at 59 FR 53936, Oct. 27, 1994. Redesignated and amended at 60 FR 17202, Apr. 5, 1995]

§ 200.43 Disposition of business by exercise of authority delegated to individual Commissioner.

(a) *Delegation to duty officer.* (1) Pursuant to the provisions of Pub. L. No. 87-592, 76 Stat. 394, as amended by section 25 of Pub. L. 94-29, 89 Stat. 163, the Commission hereby delegates to an individual Commissioner, to be designated as the Commission's "duty officer" by the Chairman of the Commission (or by the Chairman's designee) from time to time, all of the functions of the Commission; *Provided, however,* That no such delegation shall authorize the duty officer (i) to exercise the function of rulemaking, as defined in the Administrative Procedure Act of 1946, as codified, 5 U.S.C. 551 *et seq.*, with reference to general rules as distinguished from rules of particular applicability; (ii) to make any rule, pursuant to section 19(c) of the Securities Exchange Act of 1934; or (iii) to preside at the taking of evidence as described

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in section 7(a) of the Administrative Procedure Act, 5 U.S.C. 556(b), except that the duty officer may preside at the taking of evidence with respect to the issuance of a temporary cease-and-desist order as provided by Rule 511(c) of the Commission's Rules of Practice, §201.511(c) of this chapter.

(2) To the extent feasible, the designation of a duty officer shall rotate, under the administration of the Secretary, on a regular weekly basis among the members of the Commission other than the Chairman.

(b) Exercise of duty officer authority.

(1) The authority delegated by this rule shall be exercised when, in the opinion of the duty officer, action is required to be taken which, by reason of its urgency, cannot practicably be scheduled for consideration at a Commission meeting. After consideration of a staff recommendation involving such a matter, the duty officer shall forthwith report his or her action thereon to the Secretary.

(2) The duty officer may, when in his or her opinion it would be proper and timely, exercise the authority delegated in this section to initiate by order a nonpublic formal investigative proceeding pursuant to section 19(b) of the Securities Act of 1933 (15 U.S.C. 77s(b)), section 21(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(b)), section 18(c) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79r(c)), section 42(b) of the Investment Company Act of 1940 (15 U.S.C. 80a-41(b)), section 209(b) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-9(b)), and part 203 (Rules Relating to Investigations) of this title (17 CFR part 203). After consideration of a staff recommendation for initiation by order of a nonpublic formal investigative proceeding, the duty officer shall forthwith report his or her action thereon to the Secretary.

(3) In any consideration of Commission business by a duty officer, the provisions of subpart I herein, §200.400 *et seq.*, shall not apply, whether or not the duty officer, in exercising his or her authority, consults with, or seeks the advice of, other members of the Commission individually.

(c) Commission affirmation of duty officer action. (1) Any action authorized by

a duty officer pursuant to §200.43(a) shall be either (i) circulated to the members of the Commission for affirmation pursuant to §200.42; or (ii) scheduled for affirmation at a Commission meeting at the earliest practicable date consistent with the procedures in subpart I.

(2)(i) The Commission may, in its discretion, at any time review any unaffirmed action taken by a duty officer, either upon its own initiative or upon the petition of any person affected thereby. The vote of any one member of the Commission, including the duty officer, shall be sufficient to bring any such unaffirmed action taken by a duty officer before the Commission for review.

(ii) A person or party adversely affected by any unaffirmed action taken by a duty officer shall be entitled to seek review by the Commission of the duty officer's unaffirmed actions, but only in the event that the unaffirmed action by the duty officer (A) denies any request for action pursuant to sections 8(a) or 8(c) of the Securities Act of 1933, or the first sentence of section 12(d) of the Securities Exchange Act of 1934; (B) suspends trading in a security pursuant to section 12(k) of the Securities Exchange Act of 1934; or (C) is pursuant to any provision of the Securities Exchange Act of 1934 in a case of adjudication, as defined in section 551 of Title 5, U.S. Code, not required by that Act to be determined on the record after notice and opportunity for hearing (except to the extent there is involved a matter described in section 554(a) (1) through (6) of Title 5, United States Code).

(3) Affirmed or unaffirmed action taken by the duty officer shall be deemed to be, for all purposes, the action of the Commission unless and until the Commission directs otherwise. Rule 26 of the Commission's rules of practice, 17 CFR 201.26, shall not apply to duty officer action.

[42 FR 14692, Mar. 16, 1977, as amended at 59 FR 53936, Oct. 27, 1994. Redesignated and amended at 60 FR 17202, Apr. 5, 1995; 60 FR 32795, June 23, 1995]